United Nations CAT/C/UKR/QPR/7

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the seventh periodic report of Ukraine*

Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. With reference to the Committee's previous recommendation to the State party to guarantee that all detained persons are afforded, in law and in practice, all the fundamental legal safeguards against torture and ill-treatment from the very outset of their deprivation of liberty (see CAT/C/UKR/CO/6, para. 9),[1] and in the light of the follow-up information provided by the State party,[2] please provide additional information on whether all persons detained in special institutions and detention centres of the internal affairs agencies and in pretrial detention facilities are entitled to all fundamental legal safeguards, including being informed of and understanding their rights; being informed of the charges against them; having prompt access to a lawyer or legal aid; undergoing a medical examination by an independent doctor; notifying a member of their family or another appropriate person of their own choice of their detention and whereabouts; and having their detention registered.

2. Please provide additional information on efforts by the General Prosecutor's Office to monitor effectively the provision of safeguards to persons held in the temporary detention facilities maintained by the Security Service of Ukraine, as described in the State party's follow-up report (para. 10). Please provide data on the number of complaints received concerning the failure by law enforcement or penitentiary officers to provide such safeguards to persons in detention. Please provide data on any cases during the reporting period in which personnel of the Security Service or State Penitentiary Service of Ukraine were found to have failed to afford the above-mentioned fundamental safeguards to a person in their custody, and indicate the remedial action taken in any such case.

3. Please indicate whether, as previously recommended by the Committee (para. 9), the State party has established a single national register of detention, including all temporary

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

[2] CAT/C/UKR/CO/6/Add.1.

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detention facilities, that includes the exact time, date and place of detention from the very outset of deprivation of liberty and not from the time of the writing of the protocol of detention, as well as information regarding transfers. Please also provide information on steps taken to ensure the accuracy of the information included in the detention register, and indicate if any official was disciplined or prosecuted during the reporting period for falsifying information in a detention protocol or detention register.

4. Please indicate whether the information concerning the identity and location of all persons detained in the context of the "anti-terrorist operations" in the country's east is available in a detention register that is accessible to the family members and lawyers of those detained.

5. Please indicate whether the State party has taken steps to ensure that all persons held in administrative detention, including those detained in the context of the "anti-terrorist operations", are entitled to the above-mentioned safeguards, including the right to free legal aid, promptly following their deprivation of liberty and throughout the period of their detention. Please also provide information on the measures taken by the State party in response to allegations, including those identified in the reports of the Human Rights Monitoring Mission in Ukraine of the Office of the United Nations High Commissioner for Human Rights (UNHCR), that officers of the Security Service of Ukraine have deprived persons of their liberty and held them in unacknowledged places of detention and in incommunicado detention, including at the Security Service facility in Kharkiv.[3] Please indicate if any member of the Security Service has been investigated, disciplined or prosecuted for maintaining unofficial places of detention, and the outcomes. Please also describe any progress made in investigations concerning the following individuals who were allegedly held in secret detention at the Kharkiv facility during 2016: Vladimir Alekseevich Bezobrazov; Vyctor Olekeevych Ashkhin (released on 25 July 2016 and previously subjected to torture by Security Service officers at a facility in Kramatorsk); and Mykola Mykolaevych Vakaruk (released on 25 July 2016 and previously subjected to torture by Security Service officers at a facility in Chervonoarmyisk/Pokrovsk).

6. Please provide updated information on the status of the draft law "on prevention of disappearance of people and facilitation in tracing missing persons", and indicate whether the State party has established a dedicated, independent entity responsible for tracing missing persons.

7. Please indicate whether the State party has taken steps to ensure that the identities and whereabouts of all persons eligible for prisoner exchanges with armed groups is shared with the Parliamentary Commissioner for Human Rights and that the process is subject to judicial oversight.

8. With reference to the Committee's previous concluding observations (para. 10) expressing concern about the status of investigations into allegations of excessive use of force during popular protests at the Maidan in Kyiv from December 2013 to February 2014 and in Odessa and Mariupol in May 2014, and in the light of the follow-up information provided by the State party, please provide information on:

(a) Whether the investigations into the unlawful use of physical violence by law enforcement agencies and mass shootings in Kyiv has resulted in any criminal convictions and, if so, details on the resulting sentences and verdicts. Please also provide specific information on the six proceedings on which courts had already reached decisions, as referenced in paragraph 87 of the State party's follow-up report;

[3] See A/HRC/27/75.

(b) Specific information about the outcome of the criminal trial of "Berkut" police officers Serhiy Zinchenko and Pavlo Ambroskin, accused of killing protesters on 20 February 2014, and information as to whether any other of the indicted members of the "Berkut" regiment have been apprehended and tried;

(c) Specific information concerning progress in the trial of Oleksandr Yakimenko, former head of the Security Service of Ukraine, and his deputy, on charges of abuse of power, including with respect to the operation involving arson of the Federation of Trade Unions of Ukraine building, which resulted in the deaths of 17 people;

(d) Whether the investigation into violence on 2 May 2014 in Odessa, which resulted in the deaths of 48 people (criminal case No. 12014160500003700 before the Malynovsky District Court) has resulted in any criminal convictions and, if so, details on the resulting sentences and verdicts; the status of the investigation into the House of Trade Unions fire and the failure of the fire brigade to respond; the investigation into the failure of the police to ensure public safety; and the outcome of the six criminal proceedings against 26 persons relating to events in Odessa referenced in the State party's follow-up report;

(e) Information on measures taken by the State party to ensure the safety of judges and participants involved in all of the judicial proceedings related to the events in Odessa so as to ensure the effective and independent administration of justice, in the light of reports that the judges and accused in certain proceedings have been subjected to aggressive behaviour by activists and inadequately protected by police;

(f) Whether the investigation into the events on 9 May 2014 in Mariupol (criminal case No. 22200105000000047) has resulted in any criminal convictions and, if so, details on the resulting sentences and verdicts.

9. With reference to the Committee's previous concluding observations (para. 11) expressing concern at reports of torture, ill-treatment, enforced disappearance, deprivation of life and other violations by members of armed groups, including in the Donetsk and Luhansk regions, and in the light of the follow-up information provided by the State party, please provide information on:

(a) Any cases in which alleged perpetrators of acts of torture, ill-treatment, enforced disappearances and deprivation of life committed on the territory of the State party but in areas not under governmental control — whether officials of the State party, members of armed groups or officials of the Russian Federation — have been prosecuted during the period under review;

(b) The status of the criminal investigations pertaining to such abuses being undertaken by the Security Service of Ukraine and the Military Prosecutor;

(c) Whether redress and rehabilitation have been provided to victims identified during the above investigations, including to those who were wounded and to the families of those killed, in accordance with the Committee's general comment No. 3 (2012) on the implementation of article 14.

Articles 1 and 4

10. With reference to the Committee's previous concluding observations (para. 7), please indicate whether the State party has amended the Criminal Code to include a definition of torture that is in conformity with article 1 of the Convention and that specifically includes the inflicting of torture by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

11. With reference to the Committee's previous concluding observations (para. 8), please indicate if the State party has amended its legislation to ensure that the crime of torture is considered a grave crime and subject to penalties commensurate with the seriousness of the offense.

12. Please provide data on prosecutions of public officials carried out during the reporting period under articles 127 (torture), 364 (abuse of authority), 365 (exceeding authority) and 373 (compelling testimony) of the Criminal Code. Please provide data on the number of such prosecutions that resulted in a conviction and the sentence handed down in each case, disaggregated by the institutional affiliation of the perpetrators. Please in particular indicate whether any member of the Security Service of Ukraine has been prosecuted on charges of torture during the reporting period, and the outcome(s).

13. Please provide additional information on the progress of the Prosecutor-General's investigation into the 24 complaints resulting in indictments of 40 law enforcement officers for torture or ill-treatment received in the first nine months of 2015, as referenced in the State party's follow-up report, and information on any investigations into allegations of torture and ill-treatment that have led to indictments since September 2015.

14. Please provide information concerning any prosecutions carried out by the Office of the Military Prosecutor relating to allegations stemming from the conflict zone, including:

(a) Charges of voluntary homicide and illegal abduction or confinement by members of special police battalion "Tornado". Please also provide information on steps taken to investigate allegations of sexual violence perpetrated by members of the battalion and the measures taken by the State party to ensure the safety of all participants in court proceedings related to those allegations;

(b) Charges against members of the territorial defence battalion "Aidar".

Article 2[4]

15. Please indicate whether legislation or regulations have been enacted to provide for mandatory video recording of interrogations and to ensure that video monitoring equipment is installed in all places where interrogations are permitted in all places of deprivation of liberty.

16. With reference to the Committee's previous concluding observations (para. 12), expressing concern about the continued use of administrative detention, please provide information on any measures taken by the State party to reduce the period during which persons suspected of terrorism can be held in preventive detention from the current allowance of 30 days and to permit administrative detainees the right to appeal against their deprivation of liberty.

17. Please describe any investigations undertaken into allegations, including those reported by the UNHCR Human Rights Monitoring Mission in Ukraine, that law enforcement officials have employed threats of sexual violence against individuals detained under charges of terrorism during interrogation.[5] Please indicate whether any official has

[4] The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

[5] See A/HRC/27/75.

been prosecuted for sexual violence during the reporting period and the outcome. Please also indicate whether the State party has taken measures to ensure that forensic examinations are conducted in all cases of alleged sexual violence, and provide information on any services made available for survivors of sexual violence in the territory of the State party.

18. With reference to the Committee's previous concluding observations (para. 16) please describe measures taken during the reporting period to ensure that sufficient staffing and financial resources, including from the State budget, have been provided to ensure the full and effective operation of the national preventive mechanism, in compliance with the Optional Protocol to the Convention. Please indicate how the State party will ensure that the national preventive mechanism is able to undertake preventive visits outside the framework of the investigative work carried out by the Ombudsman's office. Please also provide data on the number of visits to places of detention undertaken by the national preventive mechanism during the reporting period, and provide information on how the resulting recommendations have been implemented.

19. Please provide information on any measures taken during the reporting period to safeguard the independence of the judiciary from political interference and other forms of pressure, particularly in the context of high-profile cases. Please also provide information on instances in which investigating judges have ordered the investigation of allegations of torture or ill-treatment aired in court by a criminal defendant, pursuant to article 206 of the Criminal Procedure Code.

20. With reference to the Committee's previous concluding observations (para. 17) expressing concern about the unnecessary detention of asylum seekers, please provide information on measures taken by the State party to ensure that asylum seekers are detained only as a matter of last resort and for as short a period as possible, and provide data on the number of asylum seekers currently in detention and the length of time they have been detained. Please also provide data on the application of alternatives to detention for asylum seekers by courts during the reporting period.

21. With reference to the Committee's previous concluding observations (para. 14) expressing concern at the persistently high rate of domestic violence in the country, please provide information on whether the State party's legislation now specifically criminalizes domestic violence; data on complaints received, investigations undertaken and the outcome of any prosecutions concerning domestic violence during the reporting period; steps taken to ensure that victims of domestic violence benefit from protection, including access to shelters in all parts of the country, medical and legal services, psychosocial counselling and redress, including rehabilitation; and any training provided to law enforcement officials, judicial authorities and medical and social workers to deal with cases of domestic violence.

22. With reference to the Committee's previous concluding observations (para. 15) expressing concern that the crime of human trafficking is not properly investigated and prosecuted and victims lack access to effective remedies and redress, please provide updated information on the number of investigations, prosecutions and sentences handed down for human trafficking; funds provided to the State Targeted Social Programme; the results of international cooperation initiatives to combat human trafficking; whether victims of trafficking are provided with redress and effective remedies, including psychological and legal support, medical care, access to shelters and welfare benefits and work permits; whether specialized training is provided to police, prosecutors, judges, immigration officers, border police, psychologists and community support officers aimed at the effective prevention, investigation, prosecution and punishment of acts of trafficking; and any awareness-raising or media campaigns on the criminal nature of such acts.

23. With reference to the Committee's previous concluding observations (para. 13), please indicate whether the State party has established a system of juvenile justice that promotes alternative measures to deprivation of liberty whenever possible.

Article 3

24. With reference to the Committee's previous concluding observations (para. 17), please provide updated information on:

(a) Steps taken to ensure that all asylum seekers have access to fair and efficient refugee status determination procedures and are effectively protected against refoulement, including through the creation of a formalized border monitoring mechanism in cooperation with UNHCR and civil society organizations;

(b) Whether asylum applicants have access to legal aid and interpreters and are allowed more than five days to file appeals against negative asylum decisions;

(c) Measures taken to ensure that internally displaced persons are effectively protected from being returned to a risk of torture or ill-treatment.

Articles 5 and 7-8

25. Since the State party's previous report was considered by the Committee, please provide information on whether the State party has rejected, for any reason, the request of a State for the extradition of an individual suspected of having committed torture and whether it has started prosecution proceedings against such an individual as a result. If so, please provide information on the status and outcome of such proceedings.

Article 10

26. With reference to the Committee's previous concluding observations (para. 18), please provide information on:

(a) Any training programmes developed to ensure that all public officials, including law enforcement, prison and immigration officers and judges, are aware of the provisions of the Convention, in particular in the context of the ongoing reform of law enforcement in the State party;

(b) Measures taken to ensure that law enforcement officials are trained in and comply with the Code of Conduct for Law Enforcement Officials and with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(c) Whether officials, members of the security services and military personnel in the State party have received training on the provisions of the Convention, human rights law and international humanitarian law, including those deployed to areas in the Donetsk and Luhansk regions;

(d) Whether training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) has been provided to medical personnel and other officials dealing with detainees and asylum seekers in the investigation and documentation of cases of torture;

(e) Whether methodologies have been developed to assess the effectiveness and impact of the training programmes on the prevention and absolute prohibition of torture and ill-treatment.

Article 11

27. With reference to the Committee's previous concluding observations (para. 19) expressing concern about serious overcrowding, inter-prisoner violence, high mortality rates and poor conditions in a number of prisons, please provide updated information on:

(a) Measures taken to reduce overcrowding in places of detention, including through greater resort to alternatives to incarceration;

(b) Measures taken to reduce inter-prisoner violence, including by improving prison management and reducing the prisoner/staff ratio and ensuring that the internal regulations of penal institutions explicitly prohibit prison staff from designating prisoners with the power to manage other prisoners; and data on the number of investigations undertaken into the instigation by prison staff of inter-prisoner violence, and any resulting prosecutions and convictions;

(c) Measures taken to improve material conditions of detention in conformity with the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including ensuring that international standards for living space are universally respected;

(d) Measures taken to improve the conditions in which detained persons are transported to penitentiary facilities, particularly by rail, and to ensure that persons are not transported in conditions amounting to ill-treatment;

(e) Data on the number of investigations into deaths in custody carried out during the reporting period and the number of resulting prosecutions for torture and ill-treatment and their outcomes;

(f) Whether independent forensic examinations have been allowed in connection with all cases of deaths in custody and whether the results of independent autopsies have been accepted by courts as evidence in criminal or civil cases;

(g) Training provided to prison staff and medical personnel on communication with and the managing of inmates and on detecting signs of vulnerability.

28. Please indicate whether the Parliamentary Commissioner is able to monitor and visit regularly all places of deprivation of liberty and is able to carry out unannounced visits, and provide data on the number of visits carried out by the Parliamentary Commissioner to places of detention during the reporting period.

29. Please provide updated information on the activities of the mobile units that inspect penitentiary institutions described in the State party's follow-up report (paras. 68 and 69). In particular, please provide information concerning any allegations of torture or ill-treatment received during these inspections and provide information on remedial steps and/or investigations opened in response to such allegations.

30. Please provide data on the number of complaints of torture and ill-treatment received by other independent international and domestic prison monitoring entities during the reporting period, disaggregated by facility, and information on concrete actions taken in response to such complaints. Please indicate if any penitentiary official has been prosecuted for committing reprisals against inmates who complained about their treatment or conditions of detention during the reporting period.

31. Please describe the impact of the adoption by the Ministry of Justice of recommendation for improving investigation of allegations of ill-treatment in prisons and pretrial detention (No. 178/5) as referenced by the State party in its follow-up report (para. 50).

32. Please describe measures taken to ensure that independent monitors have full, unannounced access to all Security Service of Ukraine facilities, including at Kharkiv, Kramatorsk, Mariupol and Izyum, and provide data on any resulting visits and their outcomes.

33. With reference to the Committee's previous concluding observations (para. 20) expressing grave concern at the serious deterioration of health condition in prisons and the increase in mortality of detainees, please provide information on:

(a) Whether the State party has taken measures to enhance the independence of health-care staff working in penitentiary facilities from prison administrators and to ensure adequate funding for health care in prisons;

(b) Measures taken to ensure that inmates are referred for specialist and outside treatment where required and to ensure that unnecessary limitations are not placed on the outside providers from which inmates may receive medical assistance when required;

(c) Measures taken to ensure that appropriate medical treatment is available for detainees with HIV/AIDS and tuberculosis in all penitentiary facilities, and data on the number of inmates who have died of tuberculosis and HIV/AIDS during the reporting period, disaggregated by year and facility, and the results of any investigations into those and other deaths in custody.

Articles 12 and 13

34. With reference to the Committee's previous concluding observations (para. 10), please provide updated information on:

(a) Efforts to establish a genuinely independent complaints mechanism to receive allegations of torture and ill-treatment, and to ensure that persons who have complained are protected from reprisal, and data on the number of complaints of torture and ill-treatment received by any such mechanism during the period under review;

(b) Whether an independent monitoring and oversight mechanism has been established to ensure that prompt, effective and impartial pretrial criminal investigations are carried out into all allegations of torture and ill-treatment by law enforcement officials;

(c) Whether the State party has created a State Bureau of Investigation as planned and, if so, data on the number of cases in which this body has investigated allegations of torture or ill-treatment or complicity in or acquiescence to such conduct by high-ranking officials during the reporting period, as well as information on the outcome of any such investigations;

(d) Whether the State party has taken measures to ensure that prosecution authorities are promptly notified about injuries identified on detainees in temporary holding facilities;

(e) Whether the State party has carried out investigations into video recordings that have appeared on semi-official websites showing confessions obtained under duress and without access to legal counsel.

35. With reference to the Committee's previous concluding observations (para. 24), please provide detailed statistical data on cases in which officials have been prosecuted or disciplined for failing to adequately investigate complaints of torture or ill-treatment or for refusing to cooperate in investigating any such complaint.

36. Please provide updated information on:

(a) The outcome of investigations by the Office of the Military Prosecutor of the 12 cases of alleged torture committed by members of territorial defence battalions between March 2014 and February 2016, and any additional cases of alleged torture or ill-treatment by members of territorial defence battalions investigated during the reporting period;

(b) The outcome of the 1,925 criminal investigations into allegations of torture and ill-treatment by police and penitentiary officials launched in 2015 by the Office of the Prosecutor-General; the result of indictments against 49 police and penitentiary officials for alleged acts of torture and ill-treatment; and the results of any additional investigations of police and penitentiary officials by the Office of the Prosecutor-General during the reporting period;

(c) The results of any investigation undertaken into allegations by several individuals previously held in the Mariupol SIZO that they had been ill-treated by Security Service of Ukraine officials and members of the Azov regiment and held in incommunicado detention, that evidence obtained through torture had been used during their trial and that they had been subjected to reprisals by members of the Security Service after they challenged the admissibility of that evidence;

(d) The results of the investigation into the killing of Aleksandr Tsukerman by law enforcement officers in Krivoye Ozero village on 23 August 2016.

Article 14

37. With reference to the Committee's previous concluding observations (para. 21), please provide information on:

(a) Whether the State party has amended its legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention;

(b) Whether any resources have been allocated for rehabilitation programmes in the State party, including for victims of torture, families of missing persons and demobilized soldiers;

(c) Any specific examples of cases in which victims of torture have received medical or psychosocial rehabilitation and information on rehabilitation programmes available in the State party and the resources made available to them;

(d) Information on any redress and compensation measures ordered by courts since the previous periodic report, including the number of requests for compensation made, the number granted and the amounts ordered and actually provided in each case;

(e) Data on compensation awards provided during the reporting period to individuals who have received judgments from the European Court of Human Rights against the State party concerning torture and ill-treatment (violations of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

Article 15

38. With reference to the Committee's previous concluding observations (para. 22), please provide information on:

(a) Measures taken by the State party during the period under review to ensure in practice that confessions obtained as a result of torture or ill-treatment are not admissible in court;

(b) Information concerning cases in which courts have deemed confessions or other evidence inadmissible because they were obtained under duress;

(c) Data on any cases during the reporting period in which private citizens have been prosecuted for illegally detaining and torturing persons living in the vicinity of the conflict zone in order to extract confessions that they assisted armed groups, and the outcomes.

Article 16

39. Please describe measures taken by the State party to protect human rights defenders, including lawyers, journalists and other media workers, from reprisals, including intimidation, harassment and violent attacks motivated by their work, and to investigate all cases of reprisals and ensure accountability for the perpetrators. In particular, please provide information on measures taken in the following cases:

(a) The killing of journalist Pavel Sheremet in Kyiv on July 20, 2016;

(b) The killing of defence lawyer Yuriy Grabovskiy in March 2016;

(c) Numerous threats made against human rights monitors and journalists in the wake of the publication of their personal information by the pro-government website "Myrotvorets".

40. With reference to the Committee's previous concluding observations (para. 23), please provide information on:

(a) The number of non-combat deaths in the Ukrainian armed forces during the period under review, and the number of such deaths attributed to hazing (*"dedovshchina"*);

(b) Investigations undertaken during the period under review into cases of suspected hazing in the military, information on whether military prosecutors or the national police have undertaken these investigations and whether any have resulted in prosecutions and the conviction of those responsible;

(c) Whether redress and rehabilitation, including medical and psychological assistance, has been provided to victims of hazing in the military during the period under review.

41. Please provide information on:

(a) Whether the use of physical restraints on persons with mental disorders and psychosocial disabilities in psychiatric institutions has been regulated to ensure that they are used only as a last resort, to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain that risk, and only when expressly ordered by a doctor or immediately brought to the attention of a doctor and applied with clear therapeutic purpose;

(b) Whether personnel in psychiatric establishments receive appropriate training on the application of restraint measures;

(c) Any investigations undertaken into complaints of violations concerning the use of restraints, and their outcomes;

(d) Measures taken to ensure effective legal safeguards for persons subjected to involuntary seclusion in psychiatric institutions, including the right of effective appeal.

General information on other measures and developments relating to the implementation of the Convention in the State party

42. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.